

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GREG W. SCHOENLEIN,)	CIVIL NO. 08-00503 HG-KSC
)	
Plaintiff,)	
)	
vs.)	
)	
CLAYTON FRANK, et al.,)	
)	
Defendants.)	
_____)	

**FINDINGS AND RECOMMENDATION TO DENY MOTION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiff requests a temporary restraining order to prevent Defendants from removing, dismantling, destroying, or discarding the Halawa Correctional Facility High Security's emergency generator that is at issue in this case. [Doc. #15] Plaintiff made a similar request in Civ. No. 08-00073, although he did not seek a restraining order. Plaintiff's earlier request was denied because Defendants represented to the court that the generator was not in imminent danger of being replaced or otherwise moved, and that, if the situation changed, Defendants agreed to notify the court and Plaintiff before taking such action. Defendants state again that they will advise the court and Plaintiff before making any changes with the generator.

To obtain a temporary restraining order or preliminary injunction, the moving party must demonstrate "either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the

merits were raised and the balance of hardships tips sharply in [the moving party's] favor." *Lands Council v. Martin*, 479 F.3d 636, 639 (9th Cir. 2007) (citing *Clear Channel Outdoor Inc. v. City of L.A.*, 340 F.3d 810, 813 (9th Cir. 2003)).

Because the generator at issue has not yet been replaced, repaired, or to the court's knowledge, altered in anyway, and Defendants state that they have no intent to do so at this time, and will notify the court if matters change, Plaintiff cannot show the likely and imminent possibility of irreparable injury. The court **FINDS** that this Motion is premature and **RECOMMENDS** that it be **DENIED** without prejudice to refiling when and if Defendants determine that the generator will be imminently replaced, repaired, removed, or altered. At that time, Defendants **SHALL NOTIFY** the court and Plaintiff of their intentions regarding the generator, and may then renew their Motion.

IT IS SO FOUND AND RECOMMENDED.

DATED: January 26, 2009.




Kevin S.C. Chang
United States Magistrate Judge

Schoenlein v. Frank, et al., Civ. No. 08-00503 HG/KSC; FINDINGS AND RECOMMENDATION TO DENY MOTION FOR TEMPORARY RESTRAINING ORDER; pro se attys/TROs/ Schoenlein 08-503 F&R KSC (dny re generator)